

# OUTBOUND ACQUISITIONS: HOLDING COMPANIES IN EUROPE (JUNE 24, 2016)

## A GUIDE FOR TAX PLANNING OR A ROAD MAP FOR DIFFICULTY?

	AUSTRIA	BELGIUM	CYPRUS	DENMARK	FRANCE	GERMANY	IRELAND	ITALY	LUXEMBOURG	MALTA	NETHERLANDS	SPAIN	SWEDEN	SWITZERLAND	U.K.
<b>CORPORATION TAX RATE</b>	25%	33.99%*	12.5%	22%	34.43% or 38%*	~30%*	12.5% or 25%	27.5%	29.22%*	35%	25%	25%	22%	24.17%*	20%*
<b>PARTICIPATION EXEMPTION</b>	C.G. - Full* Div. - Full*	C.G. - Full* Div. - 95%	C.G. - Full* Div. - Full	C.G. - Full Div. - Full	C.G. - 88% Div. - 95%	C.G. - 95% Div. - 95%	C.G. - Full* Div. - Full*	C.G. - 95% Div. - 95%	C.G. - Full Div. - Full	C.G. - Full Div. - Full	C.G. - Full Div. - Full	C.G. - Full Div. - Full	C.G. - Full Div. - Full	Partial*	C.G. - Full* Div. - Full
<b>DIVIDENDS PAID</b>	0% / 27.5% / treaty rate*	0% / 27% / treaty rate	No W.H.T.	0% / 27% / treaty rate*	0% / 30% / treaty rate*	0% / 25% / treaty rate*	0% / 20% / treaty rate	1.375% / 26% / treaty rate*	0% / 15% / treaty rate	No W.H.T.	0% / 15% / treaty rate*	0% / 19% / treaty rate*	0% / 30% / treaty rate*	35% or treaty rate*	No W.H.T.*
<b>DIVIDENDS RECEIVED</b>	P/E or 25%*	P/E or 33%	Generally exempt	P/E* or 22%	P/E or 33.33%	P/E or ~30%	P/E* or 12.5% or 25%	P/E or 27.5%	P/E* or 21%	Exempt	P/E or 25%	P/E or 25%	P/E or 30%	Partially exempt or 35%	Generally exempt*
<b>DOUBLE TAXATION RELIEF</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>DIVERTED PROFITS TAX</b>	No	No	No	No	No	No	No	No	No	No	No	No	No	No	25%
<b>CAPITAL GAINS</b>	International P/E or 25%	P/E or 0.412% or 25.75%*	P/E or 20%*	P/E or 22%*	P/E or C.I.T. Rate	P/E or C.I.T. Rate	P/E or 33%	P/E or 27.5%	P/E or 21%	P/E or 35%	P/E or 25%	P/E or 19% or 25%	P/E or 22%	Partially exempt or 7.83%	P/E or 20%
<b>CAPITAL TAX STAMP DUTY TRANSFER TAX</b>	No Yes Yes	No Yes Yes	Yes Yes Yes	No No No	Yes Yes Yes	No* Yes* No*	No Yes Yes	Yes Yes Yes	Yes* Yes* Yes	Yes Yes Yes	No No Yes	Yes Yes Yes	No Yes No	Yes Yes Yes	No Yes Yes
<b>TAX TREATIES</b>	83	98	53	76	124	97	72 (70 in effect)	101	76	70	96	93	80	91	126
<b>C.F.C. RULES</b>	No	No*	No	Yes	Yes*	Yes	No	Yes	No	No	No	Yes	Yes	No	Yes
<b>STANDARD V.A.T. RATE</b>	20%	21%	19%	25%	20%	19%	23%	22%	17%	18%	21%	21%	25%	8%	20%
<b>TRANSFER PRICING</b>	Based on O.E.C.D. rules	Based on O.E.C.D. rules	Based on O.E.C.D. rules	Based on O.E.C.D. rules	Based on O.E.C.D. rules	Based on O.E.C.D. rules	Limited rules*	Based on O.E.C.D. rules	Based on O.E.C.D. rules	No	Based on O.E.C.D. rules	Based on O.E.C.D. rules	Based on O.E.C.D. rules	No	Based on O.E.C.D. rules
<b>DEBT VS. EQUITY</b>	No thin capitalization rules	5:1	No thin capitalization rules	4:1	1.5:1	General Limit- ation on Interest Payments*	No thin capitalization rules	General Limit- ation on Interest Payments*	No thin capitalization rules*	No thin capitalization rules	No thin capitalization rules	General Limit- ation on Interest Payments*	No thin capitalization rules*	70% to 85% of debt, with exceptions	Part of Transfer Pricing Rules
<b>PATENT BOX REGIME</b>	No	Yes*	Yes*	No	No	No	Yes*	Yes*	Yes*	No	Yes*	Yes*	No	No*	Yes*
<b>OTHER R&amp;D CREDITS</b>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
<b>COMMON REPORTING STANDARD</b>	Yes	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Early Adopter	Yes	Early Adopter
<b>B.E.P.S. ACTION PLAN</b>	Active	Planned	Planned	Active	Active	Active	Active	Active	Active	Active	Active	Active	Planned	Planned	Active
<b>F.A.T.C.A. I.G.A.</b>	Model 2	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 1	Model 2	Model 1

\* See following page for additional notes

B.E.P.S. – Base Erosion and Profit Shifting / C.F.C. – Controlled Foreign Corporation / C.G. – Capital Gains / C.I.T. – Corporation Income Tax / C.R.S. – Common Reporting Standard  
C.T.R. – Corporate Tax Rate / F.A.T.C.A. – Foreign Account Tax Compliance Act / F.T.C. – Foreign Tax Credit / I.G.A. – Intergovernmental Agreement / P/E – Participation Exemption  
P.S.D. – E.U. Parent-Subsidiary Directive / S.M.E. – Small- to Medium-Sized Enterprises / V.A.T. – Value Added Tax / W.H.T. – Withholding Tax

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### ADDITIONAL COUNTRY-SPECIFIC NOTES

#### AUSTRIA

- **Participation Exemption:** Austria also has a domestic participation exemption which exempts dividends but not capital gains, and for which there are no minimum ownership or holding period requirements.
- **Dividends Paid:** Under most tax treaties, W.H.T. is ordinarily reduced to 15% for portfolio dividends and 5% for non-portfolio dividends. In some cases, W.H.T. may be eliminated entirely.
- **Dividends Received:** Two exemption regimes apply: (i) a P/E for dividends received from E.E.A. countries and treaty countries, and (ii) a P/E for dividends received from qualifying international participations.

#### BELGIUM

- **Corporate Tax Rate:** The 33.99% rate includes a 3% austerity surcharge and is obtained by multiplying the basic C.T.R. of 33% by 3%.
- **Participation Exemption:** Capital gains are fully exempt for S.M.E.'s, or taxed at 0.412% for other corporate recipients. Shares held for less than one year are taxed at a special flat rate of 25.75%.
- **Capital Gains:** These rates include a 3% austerity surcharge.
- **C.F.C. Rules:** There are no C.F.C. rules in place yet, but domestic law has extensive anti-abuse rules with similar effects.
- **Patent Box Regime:** The former patent box regime has been abolished and will phase out by 2021. The future regime will be aligned with the B.E.P.S. Action Plan.

#### CYPRUS

- **Participation Exemption:** The exemption for capital gains is not applicable to gains from real estate transactions.
- **Capital Gains:** The 20% rate applies to gains derived from real estate transactions.

#### DENMARK

- **Participation Exemption:** Capital gains are fully exempt for S.M.E.'s, or taxed at 0.412% for other corporate recipients. Shares held for less than one year are taxed at a special flat rate of 25.75%.
- **Dividends Paid:** If a dividend is not covered by the P.S.D., it is subject to 27% withholding. However, a refund will be provided if this rate is then reduced by a treaty.
- **Dividends Received:** Dividends may be exempt even if below the 10% P/E minimum ownership requirement, for consolidated groups.
- **Capital Gains:** Exemptions also apply to consolidated groups and unlisted companies that are not part of a consolidated group and not covered by the P/E.

#### FRANCE

- **Corporation Tax Rate:** The 34.43% rate is obtained by multiplying the C.T.R. of 33.33% by an additional 3.3% social contribution. The 38% tax rate applies to corporations with an annual worldwide turnover of €250 million and is obtained by multiplying the 33.33% C.T.R. by the additional 3.3% social contribution and by an additional 10.7% temporary contribution that will expire after December 31, 2016.
- **Dividends Paid:** Most tax treaties entered into by France provide for a reduced rate of W.H.T., generally ranging from 25% to 5%, and in some cases allow for zero withholding. The rate of withholding is 75% for payments made to persons resident in countries on France's list of non-cooperative countries and territories.
- **C.F.C. Rules:** Trusts are among the targeted foreign structures.
- **Patent Box Regime:** Benefits under the current regime phase out by 2021. Cyprus intends to align its regime with the B.E.P.S. Action Plan to reach full compliance.

#### GERMANY

- **Corporation Tax Rate:** The approximate 30% rate is obtained by multiplying the regular C.T.R. of 15% by a 5.5% solidarity surcharge and then adding a municipal trade tax that may vary from 7% to 17%.
- **Dividends Paid:** The statutory rate of German W.H.T. is 25% (plus a solidarity surcharge of 5.5%). Foreign corporations may claim a refund of two-fifths of the W.H.T. (effective W.H.T. rate is 15% plus solidarity surcharge).
- **Capital Tax, Stamp Duty, and Transfer Tax:** No capital tax or transfer tax as such are levied. Registration fees may however apply. Stamp duties are mainly related to real estate transactions.
- **Debt vs. Equity:** No deduction applies for interest payments in excess of 30% of E.B.I.T.D.A.

#### IRELAND

- **Participation Exemption:** The P/E only applies for dividends and capital gains received from payors in other E.U. Member States.
- **Dividends Received:** Dividend distributions received from another Irish company are generally exempt. However, dividends received from foreign subsidiaries do not qualify for a P/E. Instead, Ireland operates a system of both treaty credit relief and unilateral credit relief, whereby credit for foreign tax is available against Irish tax on dividends received from certain foreign shareholdings. The tax rate on dividends received from a non-Irish corporation is either 12.5% (for dividends paid out of trading profits by certain companies) or 25%.
- **Transfer Pricing:** Irish transfer pricing legislation does not apply to S.M.E.'s. It is based on O.E.C.D. recommendations.
- **Patent Box Regime:** The Knowledge Development Box (K.D.B.) was introduced in Ireland in 2015. Qualifying income is taxed at an effective reduced C.T.R. of 6.25%. The K.D.B. is in line with the B.E.P.S. Action Plan.

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#### ITALY

- **Dividends Paid:** The W.H.T. may be reduced to 11% for dividends paid out to pension funds established in some E.U./E.E.A. countries. The recipient can claim a refund of up to eleven twenty-sixths (approximately 42.3%) of the W.H.T. incurred if taxes have been paid on the income in its country of residence.
- **Debt vs. Equity:** The general limitation applies on the amount of the payment in excess of earned interest, if any. The excess amount is only deductible up to 30% of E.B.I.T.D.A.
- **Patent Box Regime:** A 50% exemption is granted (reduced to 30% for 2015 and 40% for 2016) from corporation income tax on income derived from certain intangible assets. I.P. income is determined using a ratio of qualifying expenses to overall expenses. An exemption also exists for capital gains arising from the disposal of such assets if certain qualifications are met. The patent box regime is aligned with the B.E.P.S. Action Plan.

#### LUXEMBOURG

- **Corporation Tax Rate:** The 29.22% rate is the rate applicable in Luxembourg City. The general corporate rate is 21%. A 7% surcharge applies, which results in an overall rate of 22.47%. Luxembourg City adds a 6.75% municipal business tax, which results in a 29.22% Luxembourg City rate.
- **Dividends Received:** There is a 50% exemption for certain dividends not qualifying under the P/E which then is subject to tax under general corporate rates.
- **Capital Tax, Stamp Duty, and Transfer Tax:** Capital duties and stamp duties are nominal.
- **Debt vs. Equity:** In practice, a ratio of 85:15 is applied.
- **Patent Box Regime:** The former patent box regime has been abolished and will phase out by 2021.

#### NETHERLANDS

- **Dividends Paid:** Under certain conditions, the W.H.T. may be reduced by 3% in order to compensate for foreign W.H.T. that cannot be claimed as a credit by the holding company by virtue of the P/E.
- **Patent Box Regime:** A 5% effective tax rate may apply to income generated by qualifying intangibles. The Dutch Ministry of Finance has recently launched a public consultation on the revision of the existing Dutch innovation box regime to be in line with the B.E.P.S. Action Plan.

#### SPAIN

- **Dividends Paid:** Dividends distributed out of qualified exempt income (i.e., dividends and capital gains that were exempt from tax at the level of the Spanish holding company) are not subject to W.H.T. unless the recipient is resident in a country or territory that is considered a tax haven by Spain.
- **Debt vs. Equity:** No deduction applies for interest payments in excess of 30% of E.B.I.T.D.A.
- **Patent Box Regime:** 60% of income derived from the use of a qualified intangible asset is exempt from corporation income tax, provided that several conditions are met. The patent box regime is aligned with the B.E.P.S. Action Plan.

#### SWEDEN

- **Dividends Paid:** If the shares in the distributing company are deemed business-related shares under the P/E regime and the dividend (or capital gains at disposal of the shares) would have been tax exempt if the entity holding the shares had been a Swedish company, the dividend is exempt from W.H.T.
- **Debt vs. Equity:** Sweden has an intercompany interest deduction limitation.

#### SWITZERLAND

- **Corporation Tax Rate:** The regular federal C.T.R. is 8.5%. Taking into account the fact that this tax is deductible, the effective federal C.T.R. is brought down to 7.8%. However, cantonal and communal taxes also apply at the local level. Lucerne has an overall 12.2% rate; Appenzell, Aargau, Obwalden, and Nidwalden have a 12.66% rate; Zug has a 14.6% rate; Zurich has a 21.15% rate; and Geneva has a 24.17% rate.
- **Participation Exemption:** Corporate tax is reduced proportionally to dividend over total income.
- **Dividends Paid:** In many cases, a full or partial refund of Swiss W.H.T. is available by following notification procedures. The Swiss tax authorities must be notified in advance of the distribution and grant permission for relief.
- **Patent Box Regime:** A patent box regime will be introduced at the cantonal level (not the Federal level). The proposed regime would be in line with the B.E.P.S. Action Plan.

#### UNITED KINGDOM

- **Corporation Tax Rate:** The rate is due to be reduced to 19% as of April 2017.
- **Participation Exemption:** Capital gains are exempt under the "substantial shareholding exemption."
- **Dividends Paid:** The U.K. does not impose W.H.T. on dividends to nonresident shareholders as a matter of domestic law. However, a 20% W.H.T. applies to property income distributions paid in relation to certain qualifying activities by R.E.I.T.'s that are resident in the U.K.
- **Dividends Received:** In principle, dividends received by U.K. holding companies are subject to tax unless specifically exempt. However, the exemptions available are broad, and in practice most distributions received will fall under one of them.
- **Patent Box Regime:** From July 1, 2016, a new patent box will be available that is aligned with the B.E.P.S. Action Plan.